

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 29, 2012

Lyle W. Cayce
Clerk

No. 11-40384
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FINAS HEARD,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:09-CR-208-1

Before SMITH, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:*

Finas Heard pleaded guilty to conspiracy to distribute, dispense, and possess with intent to distribute 50 grams or more of cocaine base. In March of 2011, the district court sentenced him to 120 months of imprisonment, the mandatory minimum in effect at the time of Heard's offense conduct, and five years of supervised release. The district court rejected Heard's argument that the Fair Sentencing Act of 2010 (FSA) should apply retroactively to him. Heard appeals that decision.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 11-40384

We held this matter in abeyance pending the outcome of *Dorsey v. United States*, 132 S. Ct. 2321 (2012). In light of *Dorsey*'s holding that the FSA applies retroactively to those whose conduct occurred before the FSA's effective date of August 3, 2010, but who were sentenced after that date, we VACATE Heard's sentence and REMAND this case for resentencing consistent with *Dorsey*.